

From Jolyon Forsyth and Enid Florence Forsyth

Dear Director,

Thank you for the opportunity to submit a response to the consultation on the proposed legislation relating to Franked Distributions and Capital Raising. My wife, my daughter and I object to the proposed legislation changes. Two of us have been shareholders in NAB and Westpac before 19 December 1916 which is the proposed retrospective date to which the legislation will apply. This is almost six years ago and what happened then was legal for us to claim an offset for the imputation credits attached to the dividends received from our holdings in Westpac and NAB dividends received by us in that tax year. Our tax returns for the year ended 30 June 2017 complied with the then existing laws and a retrospective legislation (as this proposed law is, is bad legislation.) I am sure you remember the response to the retrospective "bottom of the harbour" legislation

In addition to the deleterious effect this will have on our current net income if passed the draft legislation is in our opinion, inequitable to Australian companies and their shareholders and it could inadvertently impact situations of legitimate operations. I am 92 years old and my wife is 89 and we are not eligible for the OAP but if this legislation is passed then we will have to review the situation which the government is likely to refuse because of the "late" claim for a part pension.

The draft legislation fails to recognise the fundamental principle underlying the franking regime (introduced by a Labor Treasurer and subsequent Prime Minister, Paul Keating) and the reason for its creation being the avoidance of double taxation on company dividends.

The Franked Distribution and Capital Raising draft legislation, if widely applied, will lead to the demise of the franking system. It will stop Australian companies who issue new shares under a Dividend Reinvestment Plan (DRP) from paying franked dividends and significantly increase the cost of capital for all franked dividend paying Australian companies. It will also risk the stability and integrity of the Australian banking system by inhibiting effective capital raising during challenging economic periods such as the start of the Coronavirus period.

1. There would be unintended consequences based on the current drafting of the proposed legislation.

As drafted, the proposed legislation does not sufficiently distinguish between acceptable activities and the tax avoidance situations it intends to address. The proposed legislation would appear to inadvertently impact situations of legitimate company operations and could accordingly delay or discourage the normal processes of capital raising, investment and economic growth in Australia and interfere with the operation and the efficiency of the Australian capital markets and the structural integrity of our banking system.

For example, irrespective of the various situations of legitimate capital management, capital raising and franked dividend payments by Australian companies, the draft legislation is broad enough that it could

also capture the well-established act of implementing Dividend Reinvestment Plans (DRPs) and DRP underwritten capital raisings in the circumstances where, in Treasury's broad view, the established practice test is not met.

The current draft of the legislation will have severe impacts to our authorised deposit-taking institutions (Australian banks) and would be contrary to the Australian Prudential Regulation Authority's (APRA) guidance provided in the most recent time of economic stress during the COVID-19 pandemic.

In April 2020, APRA provided guidance to all authorised deposit-taking institutions, primarily impacting Australia's big four banks, on capital management. This guidance included an expectation that Boards

would seriously consider deferring decisions on dividends given the economic uncertainty due to the coronavirus pandemic. It would also offset any dividends to the extent possible through other capital management initiatives, including DRPs and other capital raising initiatives to partially offset the diminution in capital from the payment of franked dividends to shareholders. As Australia moved beyond the initial phase of response, APRA updated the guidance to assist longer-term capital management enabling banks to fulfil their role in supporting economic recovery. As part of this,

APRA recommended they actively used DRPs "and/or other capital management initiatives" to offset the reduction in their capital base and balance sheets from making franked dividend payments to their shareholders. The proposed drafting of the legislation changes will risk the stability of the Australian banking system by

inhibiting effective capital management during challenging economic times.

2. Managing cash flows between capital raising and distributions can represent the normal and

legitimate flow of commercial capital management.

The drafted legislation removes the ability of operating businesses to legitimately manage and invest

their cash flows productively. Once a company has generated a profit and reinvested it, it can only

create liquidity to pay a dividend by raising debt, selling some of its assets (which might not be viable)

or by raising capital. By removing the ability to raise capital to reward shareholders, companies will need

to increase their debt levels or they will be put in a position where they will be unable to grow and

further develop their businesses. While there are instances of companies manipulating the tax system,

companies that have legitimately earned profits and paid tax should be entitled to choose how they

invest or distribute those profits to their shareholders.

3. The proposed legislation would burden thousands of Australian shareholders who have

planned or are planning their retirement, placing stress on individuals and on the Australian

pension system.

The dividend imputation system has not fundamentally changed for over 20 years and implementing

change now, and retrospectively, on people who are already retired and, in many cases, cannot return to work,

will burden individuals, their families and in turn the economy, all of which will face economic

uncertainty including my wife and me.

4. Retrospectively

We note the retrospective application to 19 December 2016 would unfairly prejudice franked

dividends paid out to shareholders of Australian companies and leave them with unexpected tax bills for dividends they have since received, to be paid at a time of economic uncertainty. This is particularly concerning for those who rely on fully franked dividends as income, including my wife and me.

The draft legislation appears to inadvertently target situations of legitimate company operation making it difficult to form a conclusive judgement as to the legitimacy of historical and future payments of fully franked dividends by Australian companies.

Tax laws should not be allowed to change retrospectively when Australians have budgeted for and paid their lawful tax assessment based on existing tax law in place.

Conclusion

While we appreciate Treasury is trying to deal with situations involving tax avoidance and franked dividend distributions, the proposed legislation, as drafted, will fundamentally change the nature of how Australian companies manage their capital, increase their cost of capital and negatively impact Australian shareholders.